

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 347 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and
MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

NIRANJAN GANPATRAO VYAS

Appearance:

MR K.P. RAVAL, A.P.P for Petitioner

MR S TRIPATHY for Respondent No. 1

CORAM : MR.JUSTICE S.M.SONI and
MR.JUSTICE C.K.BUCH

Date of decision: 29/09/98

ORAL JUDGEMENT

This appeal is directed against the judgment and order dated 28th February, 1989 of acquittal recorded by the Special Judge, Vadodara in Spl. Case no.4 of 1986 by the State of Gujarat.

Facts leading to prosecution of the respondent-accused ("accused" for short) who was charged of an offence punishable under Section 161 of the Indian Penal Code ("IPC" for short) and Section 5 (2) of Prevention of Corruption Act, 1947 (" Act of 1947" for short) for demanding and accepting an amount of Rs.25,000/- by way of illegal gratification for cancelling transfer of the complainant- a Live Stock Inspector at Zadeshwar Check post from Kutch, Bhuj. It is the case of the prosecution that one Mr. Pannu, Director, Animal Husbandary was accepting money through agency of accused to either transfer or cancel transfer of the subordinate staff. As the complainant was transferred from Zadeshwar to Bhuj, he wanted to get his transfer cancelled and made a request for the same to the accused at his residence. According to the complainant, accused told him that he may get his transfer to Bhuj cancelled and get a posting at Modasa Centre, however, he shall have to pay Rs.25,000/- and he will be available at his bungalow till 10.00 p.m. He was also asked to make the payment of the said amount by that time. The complainant therefore approached the ACB Police Inspector, Vadodara as he was to go to pay that bribe amount to the accused. The ACB after performing and demonstrating necessary formalities for raid, raided the accused in his office and the amount was recovered from the drawer. On completion of the formalities of investigation, the accused was chargesheeted before the Special Judge, Vadodara. The learned Spl. Judge framed charge against the accused to which the accused pleaded not guilty and claimed to be tried.

After examining the necessary evidence lead by the prosecution and hearing the learned Advocates, the learned Spl. Judge recorded an order of acquittal which is under challenge in this appeal.

There is no dispute as to two basic requirements of the case, namely, that the accused is a public servant and that there is a valid sanction to prosecute the accused. We, therefore, do not enter into discussion about the same as the reasons assigned by the learned Judge to conclude that the accused is a public servant and there is a valid sanction are cogent and convincing.

The question is whether prosecution has been able to prove demand and acceptance of bribe money from the complainant by the accused? To prove this fact prosecution has relied on evidence of the complainant PW 1, Panch Witness PW 2 and Investigating Officer PW 3. The whole investigation has proceeded on the premises of

the complaint filed by PW 1. Therefore, in our opinion, it is very relevant to know who and what is complainant before we discuss his oral evidence. The whole of his oral evidence will be discussed and appreciated in the backdrop of the character of the complainant.

The complainant has admitted in the cross examination in paragraphs 23 and 24 as under:

"23. I am shown an admission form filled up by me for getting admission for training. It is marked 11/1. It bears my signature. Alongwith this admission form I have annexed a marksheet duly signed by Mr. M.S. Patel, Headmaster, of Modasa High School. I am shown that marksheet. I know the same. The marksheet I produced is with my admission form. I identified my signature on the admission form. It is exh.19 and marksheet is exh.20."

"24. On the basis of my application I was given admission in training course and a list of candidates was published which included my name. I have written my marks as 69.42% in the admission form. It is true that in marksheet my total marks are shown as 486. It is not true that in SSC I have not obtained this much marks. It is not true that I have obtained only 325 marks in the examination. I am shown one SSC certificate. It is not true that the mark shown therein are only 325. SSC certificate showing 325 marks is produced at exh.21." If we look at exh.21 it is an ordinary certificate showing statement of marks obtained by Patel Rameshkumar Makanbhai seat no.43559 in the examination of April, 1976 having appeared from school no.67.100. While filling up form for training he has produced marksheet exh.20. That marksheet is of Patel Rameshkumar Makanbhai having candidate seat no.43559 appearing from school no.67.100 and the examination was held in April, 1976. Exh.20 is a copy issued by the Head Master, Modasa High School. Looking to exh.21, it is clear that it pertains to the same person who has appeared in the same examination i.e. April, 1976 examination with the same seat number and from the same school. Marksheet produced by the complainant alongwith the admission for training shows total mark 486 and percentage 69.42 while exh.21 which is the original issued by the Board which bears the signature of Jt. Secretary shows total mark of only 325. signature of Jt. Secretary shows total mark of only 325."

Thus, it is surprising as to how a statement of marks issued with the signature of Headmaster and one that issued by the Jt. Secretary are having different

marks. Despite these two certificates are shown to complainant and admitted by the complainant to be his, he is not able to explain how this variance in mark is there. This is what we have to bear in mind while assessing the character of the complainant. There is another aspect and that is as referred in paragraph 25 and 26 of his cross examination. There it is stated ".....It is true that I was discharging my duties as Inspector Livestock at Surya Ghoda at Baroda District in the year 1983. It is not true that my immediate superior at Surat was the present accused. It is true that I was posted at Surya Ghoda in the project of cattle breeding. At that time the accused was the Assistant Project Officer under that scheme, that I do not remember. I was served with a memo by the accused as I was not regularly attending the duty. Hence a report was made to the Superior Officer." In paragraph 26 he has stated, " It is not true that it so happened that I brought a recommendary chit of one Mr. Vyas-Secretary to Chief Minister. I am shown that chit Exh.17/4. I have not brought any such chit." Bearing in mind the above two facts, the third fact is also required to be borne in mind and that is that complainant was transferrred from Zadeshwar to Bhuj and he wanted his transfer from Bhuj to be cancelled. He was agreeable to work at Modasa but not at Bhuj. We are not concerned with the reasons why he wanted to get his transfer cancelled. He has approached the accused for cancellation of his transfer. He also very well knew before approaching the accused that it is not the accused who can either transfer him or cancel his transfer. He very well knew that it is that Director Mr. Pannu who can either transfer him or cancel his transfer. However, according to the complainant he has an information that Shri Pannu Director of Animal Husbandary was acting at the tune of the accused. Keeping in mind this aspect and bearing in mind the judgment of our Court as to the types of bribe givers he is required to be treated as an accomplice. This complainant will fall within the definition of accomplice as held by the Supreme Court in the case of M.O. SHAMSUDHIN V. STATE OF KERALA, (1995 SCC (Cri.) 509).

With this background, we will now appreciate the evidence to find out firstly, whether the demand is proved, secondly, whether the offer is proved and thirdly whether the acceptance is proved.

Foundation of this prosecution against the accused is the complaint of the complainant which is at Exh.18. In Exh.18, it is specifically stated by the complainant that he approached the accused at his

residence to request Mr. Pannu to cancel his transfer. The complainant approached the accused because he knew that Shri Pannu, Director of Animal Husbandary is accepting money through the accused and cancelling transfers. When he approached the accused at his residence, the accused told him that if he wants to get the transfer cancelled, he shall have to pay Rs.25,000/and he will be available at his bungalow till 10.00 O'Clock night the next day and by that time he should come and pay. When he went to file complaint he had taken with him Rs.25,000/- which he produced after the complaint was dictated by him as stated in the complaint. After the demonstration of smearing the currency notes with anthracene powder and deciding who of the Panchas was to accompany him was over, it is the case of the complainant that he in company of Panch no.1 first went to the bungalow of the accused no.1. On knocking the bungalows doors were open and they sat in the house of the accused when the accused told them that they should go to his office. This part of the evidence of the complainant is supported by PW 1. Now, when the accused according to the complainant has asked the complainant to come at his residence and pay money on 7th October, 1984 and informed the complainant that he will be available at his residence till 10.00 p.m. and when the complainant goes to his residence why should the accused have told them to go to the office. Normally, bribe taker would not accept bribe amount at the office, if they can do so at their residence and this would be for the simple reason that they would be feeling little more secure at their residence than in the office. According to PWs 1 and 2 when they reached the house of the accused no.1 they sat in the house and the complainant told the accused that , Sir, now complete the work as per yesterday's talk and the accused told them that nothing is to be done at residence and they should go to the office. Panch no.1 told him that he had heard of transfer and therefore he has accompanied his brother. Then the accused told them that the post is such ,and therefore, liable to be transferred. The accused thereafter took from his house a thermos, certain medicines and then all the three i.e. the complainant, Panch and accused went to the office in a rickshaw. He also deposed that on the way they had a talk in rickshaw and in the conversation accused had told the complainant that if he would have behaved properly this would not have happened. After going to the office, they have gone to the storeroom and while sitting on the table it is Panch no.1 who told the accused to complete the work and in reply to that, according to PW 1 the accused told them to put the money in the drawer. Thus, it is very clear

from the examination-in-chief of PW 1 that there is no demand from the complainant by the accused. This part is also supported by PW 1. From this part of evidence, it is clear that there is no offer by the complainant to the accused but the amount is placed in a drawer. A person who intends to take bribe money is not accepting the bribe money at his residence and tells the persons concerned i.e. bribe giver to come to the office and when he comes in the office, the Panch instead of bribe giver asks the accused to finish up the work and according to Panch no.1, the accused told him to place the money in the drawer. This in our opinion, cannot be treated as an offer and acceptance by the complainant.

Before we refer to the defence of the accused, at this stage, we would like to make it clear that fact of find of currency notes does not require any discussion in the matter because the amount is found, fingers of the accused, complainant and Panch no.1 are found stained with anthracene powder. The fact is how the accused has explained his fingers being stained with anthracene powder. It will be relevant therefore to refer to the defence as suggested in the cross examination by PW 1. PW 1 has denied that when he reached at the bungalow of accused, accused was ready with pant and bush-shirt with shoes on..... He has also stated that he did not know that accused took thermos as there was a call of A.I. i.e. artificial insemination and then he went to storeroom to take a bulb for semens. He had no idea that accused went to the storeroom and opened the cupboard. If the complainant and Panch no.1 had gone to the office in company of the accused and have gone to the storeroom, ignorance pleaded by the complainant about accused having opened the cupboards of the storeroom is not acceptable or believable. If the accused himself has told them to come to the office instead of accepting the money at the residence why should the accused have gone to the office and in particular to the storeroom? In our opinion, Investigating Officer has not bothered to refer to a thermos and the bulb which appears to have been taken by the accused. PW 1 has stated before the police that he had held bundles of note in one hand and that he opened the drawer of the table with the other hand. Here lies the crux of the matter. Human conduct will speak the truth here. If the accused told the complainant to place the money in the drawer then in all probability drawer must have been drawn and opened by the accused suggesting to the complainant that now it is open and he(complainant) may just place money in the drawer. Instead of that drawer is also opened by the complainant with one hand and money is placed by him with the other

hand. After the money is placed in the drawer it is closed by the complainant. It is the case of the complainant that the drawer was closed by the accused. This fact stated by the complainant is required to be appreciated. According to the complainant the accused asked him to place the money in the drawer. According to the complainant, he stood up, took out money from the pocket by one hand and placed the money in the drawer. The question is, who then closed the drawer? Whether the complainant has closed the drawer or as told by the complainant, the accused. It will be relevant to mention at this stage that tips of two fingers of the right hand of the accused are found smeared with anthracene powder. Neither the palm nor the other hand of the accused is found smeared with anthracene. It is the front edge of the bush-shirt which is found smeared with anthracene powder. It is also undisputed that anthracene powder was also found on the table. Keeping in mind this state of affairs, if complainant has stood up and come near the drawer and by one hand opened the drawer and with the other hand placed the money in the drawer and the drawer is closed by the accused, how is it that the hands of the accused in particular only the tips of two fingers, table and the bush-shirt edges are found smeared with anthracene powder. There is no scope, nor it is the case of the complainant that after putting the money in the drawer he closed the drawer with that very hand by which he has held the currency notes and has also placed his hand on the table, find of anthracene on the tips of the fingers and bush-shirt is not necessarily a circumstance adverse to the accused in absence of other relevant facts. In our opinion, it is supporting the case of the accused. What appears to have happened is that when the accused went to the storeroom for drawing bulbs for collecting semens as he had a call for artificial insemination, at that time, it is the complainant who out the money from his pocket, placed on the table, opened the drawer, took out the money from the table and placed them in the drawer and closed the drawer. This is what must have happened without the knowledge of the accused and when accused came back he sat in his chair and must have placed his hand on the table and only two fingers of the right hand are found stained with anthracene powder. Thus, it is clear that if the accused has asked to place the notes, then also there was no reason for the finger tips of the accused to be stained with anthracene powder. Thus, defence of the accused appears to be so cogent, convincing and competing with the prosecution case in the proper direction. Bearing in mind this state of affair and the backdrop of the complainant and the last suggestion as put by the defence to PW 1 i.e.

complainant. It is also very relevant to hold and accept the conclusion of the learned Special Judge which no doubt the complainant has denied, That suggestion is that ACB officer and complainant being friends, a false complaint is filed against the accused as Mr. Vyas i.e. the accused who had accompanied Mr. Pannu has written adverse remarks against the complainant and based on those remarks, after a month and a half the complainant is transferred. The complainant had a feeling that it is the accused who had got him transferred. There are certain minor contradictions as to who took out the money from the drawer etc. which are not that relevant but as we had held earlier, complainant's evidence is required to be appreciated as an accomplice and the evidence of PW 1, PW 2 and ACB, in our opinion, is not creditworthy and reliable. The learned Special Judge has therefore rightly not accepted the case of the complainant while accepting the case of the defence.

The learned Special Judge has rightly considered the fact as to collection of Rs.25,000/- by the complainant. According to the complainant an amount of Rs.25,000/- was paid to him by his father after he complained before the ACB officer while in complaint it is mentioned that he has produced Rs.25,000/-when he lodged the complaint. Another aspect of the matter appreciated by the learned Special Judge is about the time gap that on 6th October, 1998 the complainant has gone to Baroda and whether he stayed overnight at Baroda or not and how could he manage the next day about the money are all circumstances creating suspicion about his truthfulness. The suggestion by the defence about the acquaintance of the complainant with Mr. Vasava, ACB officer of Broach is also a circumstance which speaks against the complainant.

Keeping in mind all the circumstances as narrated above, we are of the opinion that the learned Special Judge is perfectly justified in passing the order of acquittal which does not call for interference at our end.

In the result, the appeal is liable to be dismissed and is hereby dismissed.

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